

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claim 1 (currently amended): A health supplement composition for mammals for improving memory and cognitive abilities comprising:

at least one phosphoester in a daily amount of between approximately 500 mg and approximately ~~26.8 g~~ 10,000 mg; and

at least one herbal antioxidant comprising a daily dosage of between approximately 1 mg and approximately 5 mg of barberry, between approximately 20 mg and approximately 50 mg of bilberry proanthocyanidins, between approximately 50 mg and approximately 100 mg of lemon bioflavonoids, between approximately 50 mg and approximately 100 mg of lime bioflavonoids, between approximately 50 mg and approximately 100 mg orange bioflavonoids, between approximately 400 mg and approximately 600 mg of curcuma, between approximately 0.1 mg and approximately 1 mg of garlic bioflavonoid, between approximately 25 mg and approximately 100 mg of ginkgo biloba, between approximately 5 mg and approximately 100 mg of ginseng, between approximately 50 mg and approximately 100 mg of gotu kola, between approximately 175 mg and approximately 250 mg of grape seed proanthocyanidins, between approximately 100 mg and approximately 500 mg of red apple quercetin, between approximately 100 mg and approximately 500 mg of red onion quercetin, and between approximately 100 mg and approximately 400 mg Siberian ginseng;

wherein said use on mammals comprises prevention or treatment of illnesses or conditions selected from the group consisting of a condition requiring memory improvement, cognitive improvement, AIDS-associated dementia, Alzheimer's disease, benign senile forgetfulness, Down's syndrome-associated dementia, Lewy body dementia, multi-infarct dementia, multiple sclerosis, Parkinson's disease-associated dementia, tardive dyskinesia, Wernicke-Korsikoff syndrome, and alcoholism-associated dementia.

Claim 2 (previously amended): The composition of claim 1 wherein said at least one phosphoester is selected from the group consisting of phosphatidylcholine, phosphatidylserine, phosphatidylethanolamine and phosphatidylinositol.

Claims 4-5 (cancelled)

Claim 9 (previously amended): The composition of claim 1, wherein said composition comprises at least one application method selected from the group consisting of parenteral, rectal, and topical administration.

Claims 11-14 (cancelled)

Claim 21 (cancelled)

Claims 34-35 (cancelled)

Claim 36 (previously added): The composition of claim 1 wherein said phosphoester is phosphatidylcholine.

Claim 37 (previously added): The composition of claim 36 wherein said phosphoester further comprises phosphatidylserine.

Claim 38 (previously added): The composition of claim 36 wherein said phosphoester further comprises phosphatidylinositol.

Claim 39 (previously added): The composition of claim 36 wherein said phosphoester further comprises phosphatidylethanolamine.

Claim 40 (previously added): The composition of claim 1 further comprising a fatty acid.

Claim 41 (previously added): The composition of claim 1 wherein said composition is administerable via an oral application method.

Claim 42 (previously added): The composition of claim 36 wherein said phosphatidylcholine comprises a daily dosage of between approximately 600 mg and 700 mg.

Claim 43 (currently amended): The composition of claim 1 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one amino acid.

Claim 44 (currently amended): The composition of claim 1 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 45 (currently amended): The composition of claim 1 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 46 (currently amended): The composition of claim 21 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one amino acid

Claim 47 (currently amended): The composition of claim 21 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 48 (currently amended): The composition of claim 21 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 49 (currently amended): The composition of claim 46 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 50 (currently amended): The composition of claim 46 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 51 (currently amended): The composition of claim 50 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 52 (currently amended): The composition of claim 48 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 53 (currently amended): The composition of claim 43 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one mineral.

Claim 54 (currently amended): The composition of claim 43 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 55 (currently amended): The composition of claim 44 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 56 (currently amended): The composition of claim 53 ~~wherein said at least one antioxidant~~ further ~~comprises~~ comprising at least one vitamin.

Claim 57 (currently amended): ~~A health supplement composition for mammals for improving memory and cognitive abilities comprising;~~

The composition of claim 2 wherein said phosphatidylethanolamine comprises having a
daily dosage of between approximately 100 mg and 500 mg; ~~and~~
~~_____ at least one antioxidant.~~

Claim 58 (previously added): The composition of claim 57 wherein said phosphatidylethanolamine comprises a daily dosage of between approximately 100 mg and 350 mg.

Claim 59 (previously added): The composition of claim 57 further comprising phosphatidylcholine.

Claim 60 (previously added): The composition of claim 57 further comprising phosphatidylserine.

Claim 61 (previously added): The composition of claim 57 further comprising phosphatidylinositol.

Claim 62 (previously added): The composition of claim 57 further comprising a fatty acid.

Claims 63-64 (cancelled)

Claim 65 (currently amended): ~~A health supplement composition for mammals for improving memory and cognitive abilities comprising;~~

The composition of claim 2 wherein said phosphatidylinositol comprises having a daily
dosage of between approximately 500 mg and 10,000 mg; ~~and~~
~~_____ at least one antioxidant.~~

Claim 66 (previously added): The composition of claim 65 wherein said phosphatidylinositol comprises a daily dosage of between approximately 500 mg and 1000 mg.

Claim 67 (previously added): The composition of claim 65 further comprising phosphatidylcholine.

Claim 68 (previously added): The composition of claim 65 further comprising phosphatidylserine.

Claim 69 (previously added): The composition of claim 65 further comprising phosphatidylethanolamine.

Claim 70 (previously added): The composition of claim 65 further comprising a fatty acid.

Claims 71-72 (cancelled)

Claim 73 (currently amended): ~~A health supplement composition for mammals for improving memory and cognitive abilities comprising;~~

The composition of claim 2 wherein said phosphatidylserine comprises having a daily dosage of between approximately 5 mg and 300 mg; and
~~at least one antioxidant.~~

Claim 74 (previously added): The composition of claim 73 wherein said phosphatidylserine comprises a daily dosage of between approximately 5 mg and 100 mg.

Claim 75 (previously added): The composition of claim 74 wherein said phosphatidylserine comprises a daily dosage of between approximately 22.5 mg and 50 mg.

Claim 76 (previously added): The composition of claim 73 further comprising phosphatidylcholine.

Claim 77 (previously added): The composition of claim 73 further comprising phosphatidylethanolamine.

Claim 78 (previously added): The composition of claim 73 further comprising phosphatidylinositol.

Claim 79 (previously added): The composition of claim 73 further comprising a fatty acid.

Claims 80-101 (cancelled)

Claim 111 (previously added): The composition of claim 40 wherein said fatty acid is lipoic acid.

Claim 113 (previously added): The composition of claim 1 wherein said antioxidant comprises at least one member selected from the group consisting of acetyl-L-carnitine, beta carotene, betaine anhydrous (trimethylglycine), boron citrate, cayenne, chromium, coenzyme Q10, copper sebacate, betaine, bromelain, DMAE (dimethyl amino ethanol), folic acid, L-arginine, L-glutamine, L-glutathione, L-lysine, L-methionine, L-aurine, L-tyrosine, lutein, lycopene, manganese (citrate), magnesium, N-acetyl-L-cystine, papain, selenium aminoate, calcium citrate, S-adenosylmethionine, succinate (calcium base soy source), ubiquinone, vinpocetine, zeaxanthin, zinc (citrate).

REMARKS/ARGUMENTS

The Examiner's attention to the present application and the recent Examiner interview are noted with appreciation. In particular, the Examiner indicated she would consider claim 14 as allowable, if incorporated into independent claim 1, which Applicant has done. The Examiner commented that she did not believe the ranges were important. Applicant disagrees, but has incorporated ranges into amended claim 1.

In paragraph 3 of the Advisory Action dated September 8, 2003, the Examiner rejected claims 1, 2, 4, 9, 36, 41, 82, 83 and 102 under 35 U.S.C. § 102(b) as anticipated by Shinitzky et al. (U.S. Patent No.4,474,773) for reasons stated in the previous Office Action (dated June 17, 2003). Applicant's Amended claim 1 (which incorporates previous claim 14) reads in part "A health supplement composition for mammals for improving memory and cognitive abilities comprising: at least one phosphoester in a daily amount of between approximately 500 mg and approximately 10,000 mg; and at least one herbal antioxidant wherein said herbal antioxidant comprises a daily dosage of between approximately 1 mg and approximately 5 mg of barberry, between approximately 20 mg and approximately 50 mg of bilberry proanthocyanidins, between approximately 50 mg and approximately 100 mg of lemon bioflavonoids, between approximately 50 mg and approximately 100 mg of lime bioflavonoids, between approximately 50 mg and approximately 100 mg orange bioflavonoids, between approximately 400 mg and approximately 600 mg of curcuma, between approximately 0.1 mg and approximately 1 mg of garlic bioflavonoid, between approximately 25 mg and approximately 100 mg of ginkgo biloba, between approximately 5 mg and approximately 100 mg of ginseng, between approximately 50 mg and approximately 100 mg of gotu kola, between approximately 175 mg and approximately 250 mg of grape seed proanthocyanidins, between approximately 100 mg and approximately 500 mg of red apple quercetin, between approximately 100 mg and approximately 500 mg of red onion quercetin, and between approximately 100 mg and approximately 400 mg Siberian ginseng, wherein at least one component in said composition is present in an amount greater than 0 mg." Shinitzky et al. disclose a process for the fractionation of lipids directed to treatment of abnormalities in the structure and dynamics of membranes such as arteriosclerosis and drug addiction. As can be seen, claim 1 has a huge list of herbal antioxidants in specific dosage ranges. Applicant's phosphoester in combination with the specific ranges of herbal antioxidants are neither anticipated nor suggested by Shinitzky et al. Accordingly, we believe that claim 1 is allowable over Shinitzky et al.

All other remaining claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Shinitzky et al.

In paragraph 4 of the Advisory Action, the Examiner rejected claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102 and 103 under 35 U.S.C. §103(a) as being unpatentable over Bombardelli et al. (U.S. Patent No. 5,043,323) in view of Shinitzky et al. (U.S. Patent No. 4,474,773) for reasons stated in the previous Office Action. Bombardelli et al. teach a dosage that is well below the Applicant's invention. Bombardelli et al. disclose a total dosage of 1 mg to 500 mg, of which the phosphoester is only a portion. Shinitzky et al. disclose intravenous administration, or administration to mouse cells in vitro (or in an experimental setting). Neither Bombardelli et al. nor Shinitzky et al. disclose a composition that provides a net antioxidant effect. Increasing the dosage of Bombardelli et al. to reach Shinitzky's level would result in an intravenous dosage that is much higher than applicant's dosage for the phosphoester, and lower for the antioxidant. In addition, amended claim 1 so narrows the herbal antioxidants and their dosages, that neither Bombardelli et al., nor Shinitzky et al. would have suggested these herbal antioxidants, in these dosages, in combination with the phosphoester. Applicant's supplement is a completely different composition, therefore a person with ordinary skill in the art would not combine Shinitzky et al. and Bombardelli et al. to produce applicant's composition. Accordingly, claim 1 is believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

Regarding the remaining claims, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

In paragraph 5 of the Advisory Action, the Examiner rejected claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102 and 103 under 35 U.S.C. §103(a) as being unpatentable over Bombardelli et al. (U.S. Patent No. 6,648,377) in view of Shinitzky et al. (U.S. Patent No. 4,474,773) for reasons stated in the previous Office Action. Bombardelli et al. teaches the use of a different composition, using the antioxidant as a carrier. Shinitzky et al. has been discussed above. As discussed above, Applicant's amended claim 1 narrows the herbal antioxidants and their dosages. Therefore, if an ordinary person skilled in the art did combine Bombardelli et al. and Shinitzky et al., the result would use the antioxidant as a carrier or preservative, not the applicant's supplement which uses the antioxidant in a beneficial manner to create a net antioxidant effect. Accordingly, we believe that claim 1 is allowable over Bombardelli et al. in view of Shinitzky et al.

Regarding the remaining claims, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

In paragraph 6 of the Advisory Action the Examiner rejected claims 1, 2, 4, 5, 9, 13, 14, 21, 36, 41, 42, 82-84, 87, 102 and 103 as being unpatentable under 35 U.S.C. 103(a) over Bombardelli et al.

(U.S. Patent No. 5,043,323), Bombardelli et al. (U.S. Patent No. 6,648,377), and Castleman (*The Healing Herbs*) in view of Shinitzky et al. (U.S. Patent No. 4,474,773). As discussed above, applicant's supplement is a completely different, and amended claim 1 has been substantially narrowed to eliminate any suggestion of obviousness. The addition of Castleman does not overcome the dosage, component, base ingredient, or administrative vehicle issues identified above. Accordingly, claim 1 is allowable over Bombardelli et al., Bombardelli et al., and Castleman in view of Shinitzky et al.

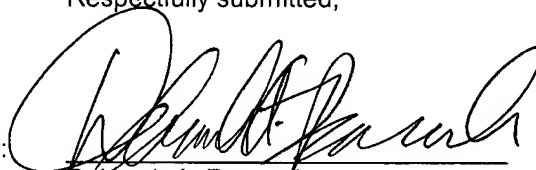
Regarding the remaining claims, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al., Bombardelli et al., and Castleman in view of Shinitzky et al.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

Respectfully submitted,

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